



Brownfields

Introduction to the SC Brownfields Program

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Environmental Control

Voluntary Cleanup Program



Redeveloping Contaminated Properties

✓ “Brownfields”

- What to be aware of

✓ Liability Issues

- How to get DHEC protection

✓ Financial Resource Issues

- Grants, low interest loans, tax incentives
- Other DHEC assistance



Brownfields/Voluntary Cleanup Program

SECTION 1

Article 7

Chapter 56

Title 44 of the 1976 Code

Amended June 11, 2008



Section 44-56-710. The purpose of the voluntary cleanup program is to:

1) enable the

expansion, redevelopment

or ***return to use***

of industrial and commercial sites whose redevelopment is complicated by real or perceived environmental contamination;



Section 44-56-710. The purpose of the voluntary cleanup program is to:

2) provide an

Incentive

to conduct response actions

at a site by providing non-responsible parties a covenant not to sue, contribution protection, and third party liability protection, or by providing responsible parties with a covenant not to sue for the work done in completing the response actions specifically covered in the contract and completed in accordance with the approved work plans and reports; and



Section 44-56-710. The purpose of the voluntary cleanup program is to:

- 3) provide reimbursement to the department for oversight costs.



Brownfields...

“Are real properties, for which the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant”. *US EPA*





Environmental Contamination

- Hazardous Wastes





Environmental Contamination





Environmental Contamination

▼ Mills





Environmental Contamination

- Garages



- Contaminated petroleum by-products, lead batteries, heavy metals, solvents



Environmental Contamination

- Industries, Mills
- Print shops
- Old Pharmacies
- Farm Supply
- Pesticide Blenders
- Furniture Refinishers
- Town Dumps
- Meth Labs
- **Almost anything
that had chemicals**





Environmental Contamination

- Hazardous Substances, Pollutants and Contaminants
- Legal Distinction: Pure Petroleum Products not “Hazardous Substance”.
 - As of June 11, 2008, petroleum impacted sites eligible for VCC



Hazardous Substance
mixed with petroleum
makes it “hazardous”



Environmental Contamination

Small releases go a long way:

A few tablespoons of some chemicals
= a couple acres of groundwater
contamination



1990's: DHEC spent > \$1.5 million on
groundwater contamination in a Columbia subdivision



Environmental Contamination

Benzene

MCL = 5 parts per billion

What is 5 parts per billion?

Stack quarters.



Environmental Contamination

- ✓ 16 quarters per inch
- ✓ $1,000,000,000 / 16 = 62,500,000$ inches
- ✓ $62,500,000 / 12 = 5,208,333$ feet
- ✓ $5,208,333 / 5280 =$
- ✓ Just over 986 MILES





Environmental Liability

Federal / State Superfund Laws

“Strict, Joint & Several Liability”

→ Responsible for damages even if no negligence

Responsible Parties are financially liable even if the release was legal



Environmental Liability

Federal / State Superfund Laws

“Strict, **Joint & Several** Liability”

→ Anyone connected to site is as responsible as any other party

Any Responsible Party can be forced to pay all of the cleanup costs



Environmental Liability

Provision in Superfund Law:

- ✓ Agency can recover **all costs** from any Responsible Party
 - Don't have to divide costs based on involvement with site
- ✓ Responsible parties can drag in other responsible parties to force payment of cost share





Environmental Liability

Property Acquisition

If not done right,
your Town / Organization
can be a



Responsible Party





Property Acquisition

RPs are subject to:

- Contribution lawsuits (other RPs)
- 3rd party lawsuits
- Enforcement action to force cleanup
- Cost recovery action
 - State / Federal agency can sue for 3X amount spent





Property Acquisition

Right Way: Acquire as
Non-Responsible Party

NRP



“Bona Fide Prospective
Purchaser”



Property Acquisition

NRP Requirements:

- ✓ No affiliation with RPs
- ✓ Bona Fide Prospective Purchaser
 - After January 2002
 - All releases before acquisition
 - Appropriate steps to control on-going releases
 - Cooperate with RPs / enforcement response actions
 - Perform “All Appropriate Inquiry”



Property Acquisition

“All Appropriate Inquiry”

- ✓ Standard set by EPA for evaluation of
 - Previous use
 - Environmental conditions
 - Ownership
- ✓ Requires “Environmental Professional”
 - “Phase I” Report
 - Parts of report less than six months before acquisition



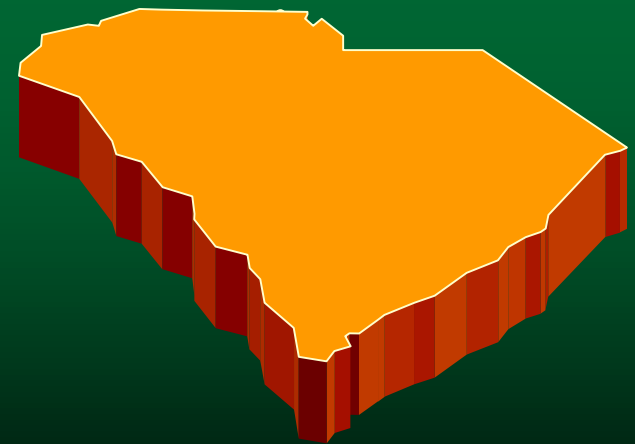
Property Acquisition

If Bona Fide Prospective Purchaser does
“All Appropriate Inquiry”:

- ✓ EPA is satisfied
 - No Federal Superfund Liability

But

- ✓ No immunity from
 - 3rd Party lawsuits
 - RP Cost Contribution
 - State Liability





Property Acquisition

Erase State Liability:

✓ Meet EPA standards
and

✓ Enroll site in a Voluntary
Cleanup Contract

VCC

- Provides for DHEC oversight of work
- Ensures site is safe for its intended use

NRP must **sign** VCC (contract) before
closing on the property



Voluntary Cleanup Contracts

NRP VCC General Provisions:

- ✓ Do environmental work on site
- ✓ Public Participation
- ✓ Pay DHEC oversight costs
 - Typically waived for local governments and non-profits
- ✓ Place deed restrictions on site if contamination remains



Voluntary Cleanup Contracts

In exchange, the NRP is protected from:

- ✓ State Superfund Liability
 - Past State costs
 - future response costs (unless NRP causes)
- ✓ 3rd Party Liability Lawsuits (state courts)
- ✓ RP Cost Contribution Lawsuits

All protections transfer
with the property



Voluntary Cleanup Contracts

Other Benefits

- ✓ Enrolling in VCC required for:
 - Low-interest Loans and Grants
 - Tax Credits & Incentives



Voluntary Cleanup Contracts

NRP Environmental Work

- Usually testing to fill in data gaps
- Reasonable steps include:
 - Often capping
 - Removal of contamination
- Less work than required of RPs
 - Testing confined to property
 - Remove / control only sources

(RPs must delineate full extent even off property, perform remedial actions)



Voluntary Cleanup Contracts

Deed Restrictions “Restrictive Covenants”

- Depends on ultimate use of property
 - Avoids expense of cleaning up to “Pristine” conditions
 - Makes sure property use won’t change to create an exposure

- Must be maintained to be effective

Example: “No Groundwater Use” for inner-city property served by waterlines



Voluntary Cleanup Contracts

Not all sites / types of wastes can enroll in VCC

- DHEC must determine if:
 - “Measurable benefit to the State, Community, or the Department”
- End use of property also considered
 - Especially if similar operations
 - Not for investment only



VCC Restrictions

No Size Limits

- ✓ Smallest property < 0.08 acres
- ✓ Several properties > 200 acres





VCC Restrictions

✓ Cannot Do VCCs on “NPL” Sites

Federal Superfund National
Priority List Sites

✓ NPL sites can still be redeveloped:

- EPA Concurrence
- Consent Agreement
 - Provides State CERCLA Liability and Contribution Protections
 - No 3rd party liability protection



VCC Restrictions

- ✓ Not for internal building issues
 - Lead-based paint
 - Asbestos
- ✓ But, lead paint or asbestos released to the environment qualify





VCC Restrictions (Partial)

- ✓ NRP may enroll sites operating under DHEC orders and permits:
 - Bureau of Water
 - Landfill Permitting *examples*
 - Subject to permitting area giving OK
 - May have to take additional steps
 - RP still responsible for the required work
- ✓ May take longer to negotiate VCC because
 - Extensive file reviews
 - Internal meetings, coordination, etc.



Vision *



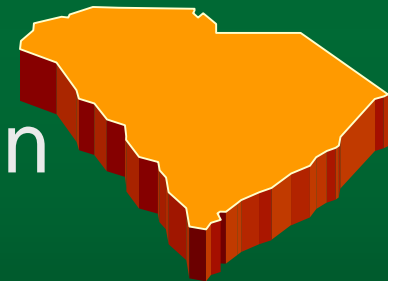
*Individual results may vary



Vision

Reuse of Brownfields Virtually Unlimited

- Retail Locations
- Natural Greenspaces
- Commercial Buildings
- “Clean” Industries
- Office Parks
- Resort Hotels
- Tourist Centers
- Parks
- Senior Citizen Housing
- Multifamily and/or Single Family Housing





City of Union





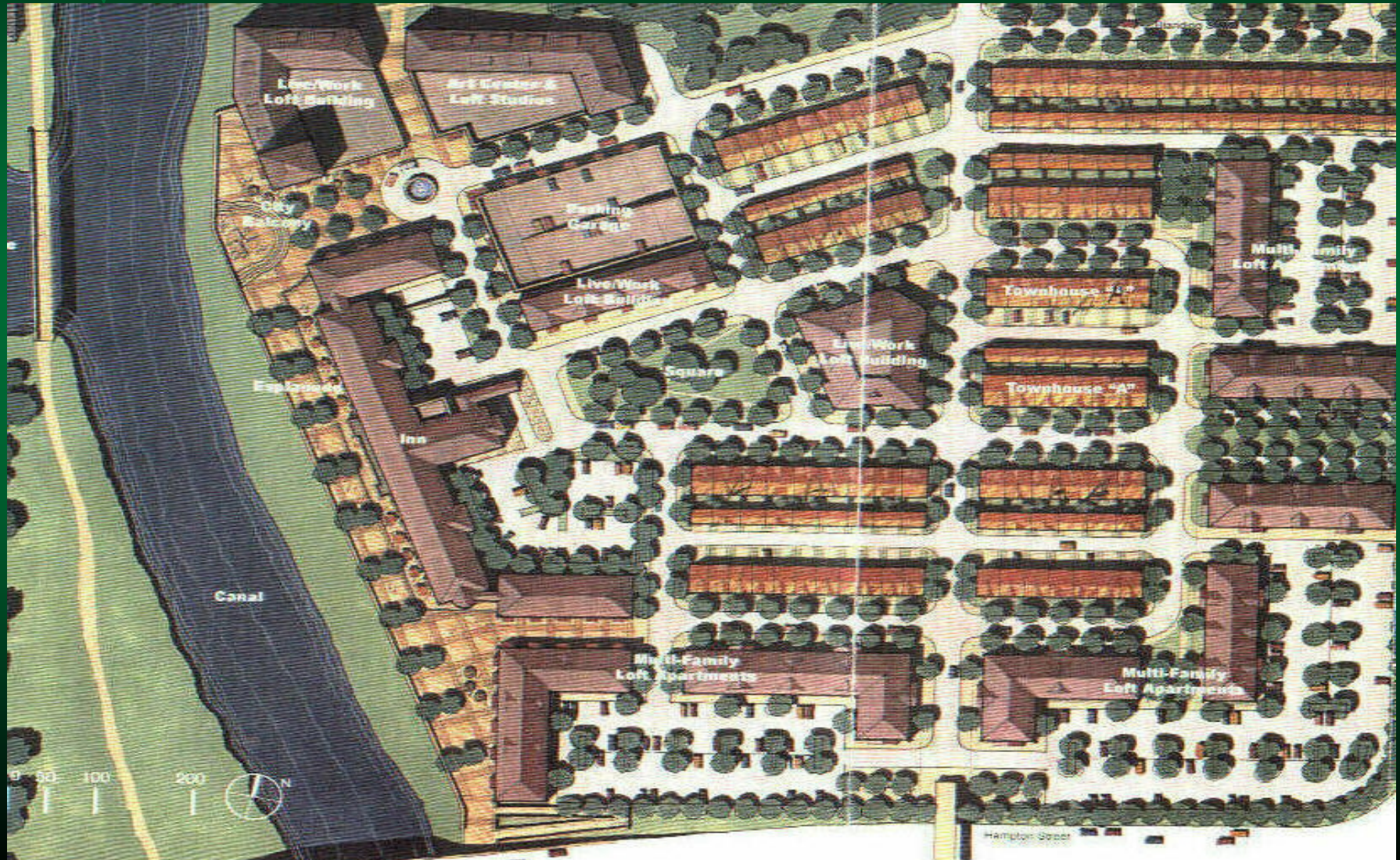
City of Columbia



Old CCI



City of Columbia





Richland School District 2

Old un-permitted
landfill

Adult Education
Building





City of Charleston





Town of Edisto Beach



Bell Buoy
Seafood

Visitor
Center/
Shrimping
Museum



Starting the Process: Information and Certification



- ✓ Submit “Information & Certification”
 - at least 30 - 45 days prior to closing on property
 - Complex sites may take >45 days
- ✓ Allow 90-100 days if a fully executed contract is needed before closing

Do not close on property until you
have signed VCC!!



Information and Certification

- ✓ Letter Application
 - No form to fill out
- ✓ Information and Certification becomes part of the contract
- ✓ Requires
 - Phase I and any other environmental reports
 - Property legal descriptions, etc.



Scoping and Negotiation

- ✓ DHEC staff visit property after receipt of complete Information & Certification
 - Need access into any buildings and all areas of property
 - Looking for potential sources
- ✓ Internal Scoping Meeting
- ✓ Contract Drafting
- ✓ Internal Review

**All occurs before
draft sent to NRP**



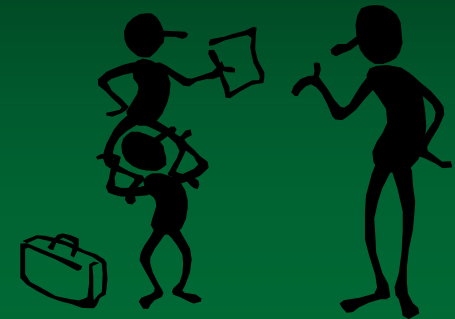
Scoping and Negotiation

- ✓ Some components of contracts are negotiable

- Model contract available online at:

- http://www.scdhec.gov/lwm/forms/NRP_Model.pdf

- ✓ Deviations from model language may require additional review by DHEC Office of General Counsel





Once Signed VCC Received...

- DHEC starts Public Comment Period
- DHEC sends Contribution Protection Notices to previous owners and operators identified by NRP
- 30 day period usually runs concurrent with Public Notice Period



Contract Execution

- ✓ DHEC executes contract If:
 - No significant objections raised during Public Comment Period
 - RPs do not raise objections via Cost Contribution notification

Environmental work
begins in earnest after
execution



Site Specific VCC Requirements

- ✓ Environmental Assessment
- ✓ Appropriate Response Actions



Environmental Assessment

- ✓ Contract outlines site specific requirements
- ✓ Work Plan due 30 to 60 days after contract execution
 - approved by the Department
- ✓ Liability protection based on contamination identified during assessment



Environmental Assessment

Target potential source areas identified in Phase I Assessment

Chemical handling areas,

Drum storage areas,

Waste disposal areas,

Underground tanks, etc...





VCC Response Actions

NRP must take Reasonable Steps to:

- ✓ Protect human health and the environment
 - Consistent with the intended future use of the property
- ✓ Stop continuing releases



Reasonable Steps

- Waste removal
- Removal/ treatment of contaminated soil
 - Capping
- Groundwater remediation generally not required
 - May need monitoring
 - NAPL will require reasonable steps



Certificate of Completion

DHEC issues Certificate after

- Environmental Assessment / Response Actions completed
- Restrictive Covenant filed with county
- May be “conditional” if continued monitoring and reporting are required

**Project
Complete!**



Resources / Money

- US EPA Grants
- DHEC Site Specific Sampling
- Petroleum Brownfields
- Low Interest Loans & Grants
- Tax Credits



EPA Grants

- ✓ Four types
 - Job Training
 - Revolving Loan Fund
 - **Assessment Grants**
 - **Removal Grants**
- ✓ All are highly competitive to obtain
 - Winning proposals require time and thought



EPA Grants

Judged on impact to:

- ✓ Human health and the environment
- ✓ Redevelopment and jobs
- ✓ Open space and parks
- ✓ Rural and urban
- ✓ Local community involvement
- ✓ Environmental Justice



EPA Grants

- SC had 8 successful applicants in 2008
 - Successful applicants often have professional consultants prepare applications
- Application deadlines November 14
 - EPA announces deadline mid-summer
 - Awards announcement spring
 - Money available the following fall



EPA Assessment Grants

Applicant Limitations

- ✓ Limited to a total of \$400,000
 - \$200,000 for hazardous substances
 - \$200,000 for petroleum
 - Unless a site-specific waiver is requested
 - \$350,000 Maximum
- ✓ Site-Specific or Community-Wide
- ✓ 3 year project period



EPA Cleanup Grants

- ✔ Can apply for up to five sites
 - \$200,000 each
 - Separate proposal for each site
 - Phase I completed
 - Phase II nearly complete
- ✔ Applicant must own property
 - but not be responsible for the contamination
- ✔ 20% cost share
 - Labor / money



Site Specific Sampling

- ✓ DHEC has some EPA funds to conduct environmental assessments
 - Available for local governments or projects with strong community support
 - Single site where redevelopment hindered
- ✓ Limited to ~ \$50,000 per site
 - Contractors
 - DHEC sampling equipment
- ✓ Contact Angela Gorman (803) 896-4121



Site Specific Assessment Process

- ✓ Local Government:
 - Notify DHEC of site
 - Provide information on SSA application
- ✓ DHEC:
 - Evaluates to determine assessment needs
 - Obtains EPA approval
 - Hires contractor to conduct assessment



SSA Information Required

- Current property ownership
- Site use & history
 - Phase I Assessment preferred
- Intended future use
- Community based planning and involvement
- Environmental Justice Plan



Petroleum Brownfields

- Petroleum impacted property now eligible under the amended state Brownfields Law.
- Site Specific Assessments available for Petroleum Brownfields similar to Hazardous Substances
- Contact Mark Berenbrok (803) 896-6848



Low Interest Loans

- ✓ ~\$2.3 million available for loans from DHEC
 - Program may expire Sept. 30, 2008
 - ✓ Can loan to Private / Public / Non-Profit
 - Private Sector : below market interest rates **1 –2%**
 - Public / Non-Profits: below market interest rates
- PLUS
- Discounted Principle up to 30% (up to \$200,000)

Borrow \$1,000,000
Repay \$800,000 + interest



Low Interest Loans

- EPA rules govern use
- Only for “Removal Actions”
 - Removal
 - Chemical treatment
 - Demolition of buildings to get to the contamination
 - Fences
 - Capping... including paving
- Can include cost for public notice and worker health and safety



Tax Credits

- ✓ Voluntary Cleanup Tax Credit
 - Returns 50 % of what is spent as credit against taxes
- ✓ “Bonus” 10% at end of project
- ✓ Subject to yearly spending caps

\$500,000 on a site over 5 years could get
Tax Credits worth \$300,000



Tax Credits

On any VCC Site issued a
Certificate of Completion:

➤ Additional \$1,000 Job Tax Credit
for 5 years

– Normally \$1,500 - \$8,500 depending on county

➤ Fees in Lieu of Taxes

– Lowers investment threshold
to \$1 million (instead of \$5 million)

➤ Property Tax Exemption for 5 years

**Depends
on
County
Council
Vote**



Questions / Assistance

1- (866) 576-3432

